

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2988 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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AJITKUMAR K SHAH

Versus

NATIONAL TEXTILE CORPORATION LTD  
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Appearance:

MR KV SHELAT for Petitioner No. 1  
Mr. Deepak G. Shukla for M/s. NANAVATI & NANAVATI  
for Respondents No. 1-3  
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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 27/12/2001

ORAL JUDGEMENT

By means of this petition, the petitioner  
has sought for a prohibitory writ that the decision taken  
by the Board of Directors of respondent no.1 Corporation

in 93rd annaual general meeting held on 16.1.1985 whereby the retirement age of the employees not covered under B.I.R. Act (hereinafter referred as "Act") and who are non-awarded staff in the mill units under the Corporation was reduced from 60 to 58 years as arbitrary, unresonable, violatie of principles of natural justice and violative of articles 14 and 16 of the Constitution and further holding that the action of National Textile Corporation Ltd. (hereinafter referred to as "NTC") in passing the resolution regarding superannuation age of non-awarded staff as malafide, arbitrary and violative of Articles 14 and 16 of the Constitution.

2. The petitioner is working as a Dyeing Master at Ahmedabad New Textile Mills. The petitioner is a science graduate and he joined Ahmedabad New Textile Mills Co. Ltd. on 27th December, 1958 as a Junior Assistant in Dyeing department. At the time of the petitioner's appointment, the age of superannuation was 60 years and that period could be extended for a period of two years. In the year 1972, the petitioner was promoted as Senior Assistant in the same department. The Ahmedabad Mill Owners's Association representing the local textile mills of Ahmedabad and Textile Labour Association representing Union of employees in the cotton textile industry, entered into an agreement dated 23rd February, 1973 confirming the age of superannuation of technical and superisory staff as 60 years and extension of serice for a further period of two years provided the employee is regular in service and is otherwise found medically fit. By virtue of section 14 of Sick Texztile Nationalisation Act, 1974 (hereinafter referred to as "the Act of 1974"), the petitioner continued in service with Ahmedabad New Textile Mills but under the management of NTC. On 6.1.1997, the petitioner was promoted as Senior Assistant Dyeing Master vide order dated 6.1.1977 and the petitioner was also given two extra increments. One increment was given with effect from 15th May, 1978 when the pay scale of the petitioner was revised. Initially, the mill in which the petitioner was serving was a private mill the management of which was taken over by NTC holding company and handed over to the respondent no.1 NTC (G) which is a subsidiary company. The respondent no.1 has given appointment orders to those persons who were non-award staff at the mill unit. In those orders, the age of superannuation was agreed and assured as 60 years. Even with previous management cum private employment, an agreement was arrived at between Mill Owners' Association and Textile Labour Association, the age of superannuation was 60 years and the same were continued by virtue of the provisions of section 8 of the

Act of 1974. It is also stated that GSTC which is an undertaking of Government of Gujarat is managing five textile mills in Ahmedabad region in all these five mills and other textile mills, the age of superannuation of technical personnel or so called non-award staff is 60 years. The Board of Directors of NTC(G) in its 93rd meeting held on 16.1.1985 and vide office order dated 22.1.1985 reduced the retirement age to 58 years from 60 years. It is also stated that the age of superannuation of head office employees is 58 years, but they are getting various benefits which are not available to the petitioner. Hence, this petition has been filed on the ground that the employees' union was assured that the superannuation age would be 60 years when the NTC undertook the management of sick textile mills by virtue of section 14 of the Act of 1974. It was specifically mentioned that the terms and conditions of service of the past management employees including the age of retirement will remain unchanged and right from 1974 onwards. Even NTC and NTC holding companies continued the age of superannuation of the employees like the petitioner till the respective employees attained the age of 60 years. However, by a resolution dated 22nd January, 1985, in the 93rd meeting of NTC (G), the respondents changed the service conditions which affect the employees adversely. The NTC (G) has no right to take away the vested right of the employees by such administrative amendment with retrospective effect. The decision of the respondent Corporation is arbitrary, illegal and the action of the respondent Corporation is estopped by conduct and by law from altering the age of superannuation unilaterally under the principles of promissory estoppel. Under the provisions of section 14 of the Act of 1974, those employees of the mills who are not workmen/non-award staff the effect of such vesting of such textile company in NTC (Gujarat) shall continue in service in Mill units with same tenure, with same remuneration, with same terms and conditions of the service and same rights and privileges as to the gratuity etc. The unilateral decision is in violation of principles of natural justice illegal and inoperative. As per the provisions of sections 14 and 37 of the Act of 1974. By the aforesaid decision in respect of the employees of mill wherein the cover under B.I.R. Act and falling under the category of non-award staff, whenever the appointment orders issued in past clearly specify the retirement age as 60 years or whether it is silent, the same should be continued as 60 years and in case of others, the retirement age will be 60 years. It is further stated that Special Civil Application no. 394 of 1985 was filed by NTC run mills Technicians and Officers' union contending that the

action of the respondent NTC in reducing the age of superannuation as violative of Articles 14 and 16 of the Constitution of India. LPA no.169 of 1985 was also admitted and is pending before the Division Bench of this Court wherein the authority and power of NTC in issuing such executive instructions and reducing the age of superannuation is under challenge. One Special Civil Application no. 4709 of 1985 and Special Civil Application no.161 of 1987 are also pending for hearing in this Court. In Special Civil Application no.161 of 1987, this Court granted stay and directed the NTC to maintain status quo. The petitioner received the orders dated 4.6.1988 and 7.6.1988 wherein the petitioner was directed to be superannuated with effect from 21st June, 1988.

3. Affidavit-in-reply has been filed on behalf of the respondent nos. 1 to 3 wherein it is stated that the respondent Corporation has been declared a sick industrial undertaking under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985. (hereinafter referred to as "SICA"). The case of the respondent Corporation is registered as case no. PSU(C) 535/92 with the Board of Industrial and Financial Reconstruction. The reference made to the Board under section 16 of the SICA is still pending before the Board. The respondent Corporation is entitled to protection being afforded under section 22(1) of SICA. Due to several financial crisis beyond the control of the respondent Corporation, the production activities of most of the mills are stopped since October, 1992. The respondent Corporation is thus paying idle wages to the existing employees. The respondent no. 1 Corporation filed one special civil application and one employee Mr. Datta, General Manager had filed LPA when Special Civil Application filed by him was dismissed. The Division Bench of this Court vide its order dated 25th January, 1993 dismissed LPA No. 159 of 1985. This Court's order dated 9.3.2000 dismissed the Special Civil Application No. 6559 of 1986 filed by Arvind V Bhatt, another similarly situated employee of the respondent no.1 corporation. In view of the decision of the Division Bench of this Court dated 25.1.1993 and of the learned Single Judge of this Court dated 9.3.2000, this petition deserves to be dismissed in limine.

4. This Court directed this petition to be heard alongwith Special Civil Application no.161 of 1987 wherein the respondent Corporation has already filed a detailed affidavit-in-reply. Hence, the detailed affidavit-in-reply has not been filed in this petition

and that Special Civil Application no. 161 of 1987 alongwith Special Civil Application No. 2708 of 1988 has already been dismissed by this Court vide its order dated 25th February, 2001 wherein it was considered that the common case of the petitioners in both the petitions is that at the time of their appointment, the age of superannuation was 60 years, but subsequently, by a resolution of Board of Directors of NTC, at its 93rd meeting held on 15.1.1985, and as reflected in the office order dated 22nd January, 1985, the age of superannuation came to be reduced from 60 years to 58 years. It has been held that as the controversy raised in the petition was squarely covered by the judgment dated 25th January, 1993 of the division bench of this Court in LPA No.159 of 1985 in Special Civil Application No. 948 of 1985 and it was not in dispute that neither of the petitioners was a workman so as to be a part of the award staff and as per the office order, the age of retirement of the petitioner was 58 years. Since the controversy was squarely covered by the aforesaid judgment, no orders were passed in that respect and the petitions were dismissed.

5. Heard the learned counsel for the parties and perused the relevant record. The contention of the learned counsel for the petitioner is that the petitioner joined his services in the year 1958 and under service conditions, superannuation age was 60 years. An agreement was arrived at on 23rd February 1973 which shows the retirement age at 60 years. Under section 14(2) of the Act of 1974, the petitioner's services are protected. According to the provisions of section 14(2) of the Act of 1974, every person who is not a workman within the meaning of Industrial Disputes Act 1947 and who has been immediately before appointed day employed in a sick textile undertaking, shall in so far as such person is employed, any action with sick textile undertaking which is vested in the national textile corporation becomes as from the appointed day an employee of the national textile corporation and shall hold his office or services thereunder by the same agency. At the same time, remuneration upon the same terms and conditions with the same rights and privileges as to pension and gratuity and other matters as he would have held the same under the sick textile undertaking if it had been vested in the national textile corporation and shall continue to do so unless and until his employment in the national textile corporation is duly terminated and until his remuneration terms and conditions of the employment are altered by the National Textile Corporation. The learned counsel for the petitioner referred annexure "K" dated 18th December, 1978 wherein

superannuation age is a condition of service and an employee was to be superannuated on the date of attaining the age of superannuation i.e. 60 years unless orders granting extension of service are issued to the employees, the employee will automatically retire on attaining the age of superannuation of 60 years. The learned counsel for the petitioner also relied on the decision of this Court dated 20th September, 2001 in Special Civil Application no. 4709 of 1985 wherein it has been held that if National Textile Corporation Ltd. has not granted any benefit to the petitioner which flows from the settlement, the National Textile Corporation Ltd. is directed to award special benefits to the petitioner in this behalf also. In this respect, the learned counsel for the respondents pointed out that a Review Application has already been preferred against the said order dated 20th September, 2001 and it is still pending and no orders have been passed.

6. On the other hand, the learned counsel for the respondents Corporation contended that the interim order granted in Special Civil Application no. 2988 of 1988 has been vacated by this Court vide order dated 6.7.1988. He also referred the decision of this Court dated 25th February, 2000 passed in Special Civil Application no. 2708 of 1988 with Special Civil Application no.161 of 1987 wherein it was considered that neither of the petitioners was a workman so as to be a part of the award staff and as per the office order, the age of retirement of the petitioner is 58 years. Since the controversy is squarely covered by the judgment of the division bench of this Court in L.P.A. No. 159 of 1985, it was not necessary to pass any order and the petition was dismissed. The learned counsel for the respondents also referred the decision of this Court in LPA No. 159 of 1985 in Special Civil Application no. 948 of 1985 dated 25th January, 1993 wherein it was considered that once it is found that no statutory rule or provision of law precludes the respondent no.1 from reducing the age of superannuation of employees like the appellant as held by the learned Single Judge, the controversy remains only in the contractual sphere and the appellant could only work out his remedies on the basis of the alleged breach of contract of service. The Division Bench has also confirmed the view of the learned Single Judge that any principle discussed therein may not apply to the facts of the present case which squarely falls within the contractual sphere of employment and when the appellant is not a workman within the meaning of the Industrial Disputes Act, 1947. The views of the learned Single Judge were affirmed by the Division Bench

in the LPA and that LPA was dismissed. On the basis of the decision of the LPA, the learned Single Judge in another writ petition being Special Civil Application no. 6559 of 1986 vide its order dated 9.3.2000 found the controversy raised in the petition as squarely covered by the judgment dated 25th January, 1993 of the Division Bench of this Court in LPA No.159 of 1985 while discussing the age of retirement of employees not covered under B.I.R. Act, 1946 and who are non-award staff in the mill units under the Corporation will be 58 years and the petition was dismissed. The learned counsel for the respondents further invited the attention of this Court to the decision of the Division Bench of this Court dated 4.12.1998 in LPA No. 49 of 1987 wherein superannuation age has been considered on the basis of the relevant clause of the office memorandum in which the age of retirement in case of headquarters employee will be continued to be 58 years as at present and the retirement age in case of employees of the mills covered under the BIR Act and falling in the category of the awarded staff will continue to be 60 years and in case of employees of the Mills, who are not covered under BIR Act and who are falling in the category of non-award staff, the following decisions were taken :

- (i) Wherever the appointment orders issued in the past clearly specify retirement age as 60 years or 58 years, the same should be continued as 60 or 58 years respectively;
- (ii) In case of others, the retirement age will be 58 years. However, the Chairman-cum-Managing Director will have the discretionary powers to continue the employee upto 60 years of age depending upon his performance. All appointment letters to be issued in future will clearly specify the retirement age as 58 years in case of all categories.

It is also held that it should be borne in mind that decision was taken by the Corporation, an autonomous body and having its constitution and rules to abide by and functions and obligations to discharge. As such, in the discharge of its functions, it is free to act according to its own right. Unless its action is malafide, even a wrong decision taken by it is not open to challenge. So far as the age of superannuation was concerned, it specifically pointed out that in absence of age of superannuation in the appointment letter, the same should be treated as 58 years. In view of the resolution, it is very clear that except pointing out age of superannuation, no right is taken away and hence the

appellant was bound in view of the conditions mentioned in the letter at serial no. 10. Accordingly, the LPA was dismissed.

7. The learned counsel for the petitioner pointed out that the matters before the Division Bench were in respect of the employees whose appointments were made after enforcement of the Act of 1974. Hence, though in the present case, the petitioner's appointment was made prior to coming into force of the aforesaid Act, and in the textile mills, when it was in the hands of private management. As such, the decisions taken in LPA are not attracted to the facts of the present case. However, the learned counsel for the petitioner pointed out that in view of section 14(2) of the Act of 1974, the respondent Corporation has privilege and discretion to alter the service conditions including remuneration and terms and conditions of the employment. As in the present case, the service conditions have already been changed by the respondent Corporation, reducing the superannuation age from 60 years to 58 years, the petitioner cannot claim to continue upto the age of 60 years or can claim 50% remuneration in two years after 58 years if he retires on superannuation age of 58 years. As such, no contention is available for the petitioner for any relief claimed by him in the present petition.

8. The learned counsel for the petitioner made a request not to give any finding regarding the petitioner's superannuation age and his claim for the recovery of 50% remuneration for two years after the retirement of the petitioner at 58 years. As the matter is still pending before BIFR and the petitioner may claim before BIFR under the provisions of SICA and no court can grant any relief where reference is pending before BIFR. No claim for wages can be granted unless BIFR or appellate authority permits for such recovery of wages as held by this Court in the case of R.A.Potnis vs. National Textile Corporation (Gujarat) Ltd. reported in 2001(3) CLR, 508 which is based on various authorities of Supreme Court as well as of the Division Bench of this Court in the case of Abad Dairy vs. Nanjibhai Dhanjibhai reported in 2000(3) GLH, 409.

9. In view of the above discussion, this petition is being disposed of finally with a liberty to the petitioner to make his claim before BIFR where reference of the respondent no.1 unit is pending. Both the parties would be at liberty to raise their legal contentions before BIFR, when the claim, if any, is made before BIFR by the petitioner. The BIFR is directed to

consider the case of the petitioner for granting permission in accordance with law, after giving an opportunity of hearing to the parties and by a speaking order, as early as possible and preferably within a period of four months from the date of presentation of certified copy of this judgment. Rule is discharged with no order as to costs.

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